

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 655

**FISCAL
NOTE**

BY SENATORS FERNS, CLINE, MULLINS AND LEONHARDT)

[Introduced February 20, 2016;

Referred to the Committee on Finance.]

1 A BILL to amend and reenact §11-13A-3 of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §11-15-8 of said code; and to amend and reenact §11-21-12 of said
3 code, all relating generally to taxes; reducing the severance tax on coal to four percent;
4 eliminating the exception for professional services from the consumer use and sales tax;
5 providing an adjustment decreasing federal adjusted gross income of up to \$20,000 in
6 Social Security benefits.

Be it enacted by the Legislature of West Virginia:

1 That §11-13A-3 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; that §11-15-8 of said code be amended and reenacted; that §11-21-12 of said code
3 be amended and reenacted, all to read as follows:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-3. Imposition of tax or privilege of severing coal, limestone or sandstone, or furnishing certain health care services, effective dates therefor; reduction of severance rate for coal mined by underground methods based on seam thickness

1 (a) *Imposition of tax.* -- Upon every person exercising the privilege of engaging or
2 continuing within this state in the business of severing, extracting, reducing to possession and
3 producing for sale, profit or commercial use coal, limestone or sandstone, or in the business of
4 furnishing certain health care services, there is hereby levied and shall be collected from every
5 person exercising such privilege an annual privilege tax.

6 (b) *Rate and measure of tax.* -- The tax imposed in subsection (a) of this section shall be
7 ~~five percent~~ 4% of the gross value of the natural resource produced ~~or the health care service~~
8 ~~provided~~, as shown by the gross income derived from the sale or furnishing thereof by the
9 producer ~~or the provider of the health care service~~, except as otherwise provided in this article.

10 For health care services, the tax imposed in subsection (a) of this section shall be five percent of
11 the gross value of the health care service provided, as shown by the gross income derived from

12 the sale or furnishing thereof by the provider of the health care service. In the case of coal, this
13 ~~five percent~~ 4% rate of tax includes the thirty-five one hundredths of one percent additional
14 severance tax on coal imposed by the state for the benefit of counties and municipalities as
15 provided in section six of this article.

16 (c) *"Certain health care services" defined.* -- For purposes of this section, the term "certain
17 health care services" means, and is limited to, behavioral health services.

18 (d) *Tax in addition to other taxes.* -- The tax imposed by this section shall apply to all
19 persons severing or processing (or both severing and processing) in this state natural resources
20 enumerated in subsection (a) of this section and to all persons providing certain health care
21 services in this state as enumerated in subsection (c) of this section and shall be in addition to all
22 other taxes imposed by law.

23 (e) *Effective date.* -- This section, as amended in the year 1993, shall apply to gross
24 proceeds derived after May31 of such year. The language of this section, as in effect on January
25 1, of such year, shall apply to gross proceeds derived prior to June 1 of such year and, with
26 respect to such gross proceeds, shall be fully and completely preserved.

27 (f) *Reduction of severance tax rate.* -- For tax years beginning after the effective date of
28 this subsection, any person exercising the privilege of engaging within this state in the business
29 of severing coal for the purposes provided in subsection (a) of this section shall be allowed a
30 reduced rate of tax on coal mined by underground methods in accordance with the following:

31 (i) For coal mined by underground methods from seams with an average thickness of
32 thirty-seven inches to forty-five inches, the tax imposed in subsection (a) of this section shall be
33 two percent of the gross value of the coal produced. For coal mined by underground methods
34 from seams with an average thickness of less than thirty-seven inches, the tax imposed in
35 subsection (a) of this section shall be one percent of the gross value of the coal produced. Gross
36 value is determined from the sale of the mined coal by the producer. This rate of tax includes the
37 thirty-five one hundredths of one percent additional severance tax imposed by the state for the

benefit of counties and municipalities as provided in section six of this article.

(ii) This reduced rate of tax applies to any new underground mine producing coal after the effective date of this subsection, from seams of less than forty-five inches in average thickness or any existing mine that has not produced coal from seams forty-five inches or less in thickness in the one hundred eighty days immediately preceding the effective date of this subsection.

(iii) The seam thickness shall be based on the weighted average isopach mapping of actual coal thickness by mine as certified by a professional engineer.

ARTICLE 15. CONSUMER SALES AND SERVICE TAX.

§11-15-8. Furnishing of services included; exceptions.

The provisions of this article apply not only to selling tangible personal property and custom software, but also to the furnishing of all services, except ~~professional and personal~~ services, and except those services furnished by businesses subject to the control of the Public Service Commission when the service or the manner in which it is delivered is subject to regulation by the Public Service Commission.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.

(a) *General.* -- The West Virginia adjusted gross income of a resident individual means his or her federal adjusted gross income as defined in the laws of the United States for the taxable year with the modifications specified in this section.

(b) *Modifications increasing federal adjusted gross income.* -- There shall be added to federal adjusted gross income unless already included therein the following items:

(1) Interest income on obligations of any state other than this state or of a political subdivision of any other state unless created by compact or agreement to which this state is a party;

(2) Interest or dividend income on obligations or securities of any authority, commission

10 or instrumentality of the United States, which the laws of the United States exempt from federal
11 income tax but not from state income taxes;

12 (3) Any deduction allowed when determining federal adjusted gross income for federal
13 income tax purposes for the taxable year that is not allowed as a deduction under this article for
14 the taxable year;

15 (4) Interest on indebtedness incurred or continued to purchase or carry obligations or
16 securities the income from which is exempt from tax under this article, to the extent deductible in
17 determining federal adjusted gross income;

18 (5) Interest on a depository institution tax-exempt savings certificate which is allowed as
19 an exclusion from federal gross income under Section 128 of the Internal Revenue Code, for the
20 federal taxable year;

21 (6) The amount of a lump sum distribution for which the taxpayer has elected under
22 Section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for
23 federal income tax purposes; and

24 (7) Amounts withdrawn from a medical savings account established by or for an individual
25 under section twenty, article fifteen, chapter thirty-three of this code or section fifteen, article
26 sixteen of said chapter that are used for a purpose other than payment of medical expenses, as
27 defined in those sections.

28 (c) *Modifications reducing federal adjusted gross income.* -- There shall be subtracted from
29 federal adjusted gross income to the extent included therein:

30 (1) Interest income on obligations of the United States and its possessions to the extent
31 includable in gross income for federal income tax purposes;

32 (2) Interest or dividend income on obligations or securities of any authority, commission
33 or instrumentality of the United States or of the State of West Virginia to the extent includable in
34 gross income for federal income tax purposes but exempt from state income taxes under the laws
35 of the United States or of the State of West Virginia, including federal interest or dividends paid

to shareholders of a regulated investment company, under Section 852 of the Internal Revenue Code for taxable years ending after June 30, 1987;

(3) Any amount included in federal adjusted gross income for federal income tax purposes for the taxable year that is not included in federal adjusted gross income under this article for the taxable year;

(4) The amount of any refund or credit for overpayment of income taxes imposed by this state, or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes;

(5) Annuities, retirement allowances, returns of contributions and any other benefit received under the West Virginia Public Employees Retirement System, the West Virginia State Teachers Retirement System and all forms of military retirement, including regular Armed Forces, Reserves and National Guard, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes: *Provided*, That notwithstanding any provisions in this code to the contrary this modification shall be limited to the first \$2,000 of benefits received under the West Virginia Public Employees Retirement System, the West Virginia State Teachers Retirement System and, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes for taxable years beginning after December 31, 1986; and the first \$2,000 of benefits received under any federal retirement system to which Title 4 U.S.C. §111 applies: *Provided, however*, That the total modification under this paragraph shall not exceed \$2,000 per person receiving retirement benefits and this limitation shall apply to all returns or amended returns filed after December 31, 1988;

(6) Retirement income received in the form of pensions and annuities after December 31, 1979, under any West Virginia police, West Virginia Firemen's Retirement System or the West Virginia State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement System or the West Virginia Deputy Sheriff Retirement System, including any

survivorship annuities derived from any of these programs, to the extent includable in gross income for federal income tax purposes;

(7) (A) For taxable years beginning after December 31, 2000, and ending prior to January 1, 2003, an amount equal to two percent multiplied by the number of years of active duty in the Armed Forces of the United States of America with the product thereof multiplied by the first \$30,000 of military retirement income, including retirement income from the regular Armed Forces, Reserves and National Guard paid by the United States or by this state after December 31, 2000, including any survivorship annuities, to the extent included in gross income for federal income tax purposes for the taxable year.

(B) For taxable years beginning after December 31, 2002, the first \$20,000 of military retirement income, including retirement income from the regular Armed Forces, Reserves and National Guard paid by the United States or by this state after December 31, 2002, including any survivorship annuities, to the extent included in gross income for federal income tax purposes for the taxable year.

(C) In the event that any of the provisions of this subdivision are found by a court of competent jurisdiction to violate either the Constitution of this state or of the United States, or is held to be extended to persons other than specified in this subdivision, this subdivision shall become null and void by operation of law.

(8) For taxable years beginning after December 31, 2016, the first \$20,000 of social security benefits received pursuant to Title 42, U.S.C., Chapter 7.

~~(8)~~ (9) Federal adjusted gross income in the amount of \$8,000 received from any source after December 31, 1986, by any person who has attained the age of sixty-five on or before the last day of the taxable year, or by any person certified by proper authority as permanently and totally disabled, regardless of age, on or before the last day of the taxable year, to the extent includable in federal adjusted gross income for federal tax purposes: *Provided*, That if a person has a medical certification from a prior year and he or she is still permanently and totally disabled,

a copy of the original certificate is acceptable as proof of disability. A copy of the form filed for the federal disability income tax exclusion is acceptable: *Provided, however, That:*

(i) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is \$8,000 per person or more, no deduction shall be allowed under this subdivision; and

(ii) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is less than \$8,000 per person, the total modification allowed under this subdivision for all gross income received by that person shall be limited to the difference between \$8,000 and the sum of modifications under subdivisions (1), (2), (5), (6) and (7) of this subsection;

~~(9)~~ (10) Federal adjusted gross income in the amount of \$8,000 received from any source after December 31, 1986, by the surviving spouse of any person who had attained the age of sixty-five or who had been certified as permanently and totally disabled, to the extent includable in federal adjusted gross income for federal tax purposes: *Provided, That:*

(i) Where the total modification under subdivisions (1), (2), (5), (6), (7) and (8) of this subsection is \$8,000 or more, no deduction shall be allowed under this subdivision; and

(ii) Where the total modification under subdivisions (1), (2), (5), (6), (7) and (8) of this subsection is less than \$8,000 per person, the total modification allowed under this subdivision for all gross income received by that person shall be limited to the difference between \$8,000 and the sum of subdivisions (1), (2), (5), (6), (7) and (8) of this subsection;

~~(40)~~ (11) Contributions from any source to a medical savings account established by or for the individual pursuant to section twenty, article fifteen, chapter thirty-three of this code or section fifteen, article sixteen of said chapter, plus interest earned on the account, to the extent includable in federal adjusted gross income for federal tax purposes: *Provided, That* the amount subtracted pursuant to this subdivision for any one taxable year may not exceed \$2,000 plus interest earned on the account. For married individuals filing a joint return, the maximum deduction is computed separately for each individual;

114 ~~(44)~~ (12) For the 2006 taxable year only, severance wages received by a taxpayer from
115 an employer as the result of the taxpayer's permanent termination from employment through a
116 reduction in force and through no fault of the employee, not to exceed \$30,000. For purposes of
117 this subdivision:

118 (i) The term "severance wages" means any monetary compensation paid by the employer
119 in the taxable year as a result of permanent termination from employment in excess of regular
120 annual wages or regular annual salary;

121 (ii) The term "reduction in force" means a net reduction in the number of employees
122 employed by the employer in West Virginia, determined based on total West Virginia employment
123 of the employer's controlled group;

124 (iii) The term "controlled group" means one or more chains of corporations connected
125 through stock ownership with a common parent corporation if stock possessing at least fifty
126 percent of the voting power of all classes of stock of each of the corporations is owned directly or
127 indirectly by one or more of the corporations and the common parent owns directly stock
128 possessing at least fifty percent of the voting power of all classes of stock of at least one of the
129 other corporations;

130 (iv) The term "corporation" means any corporation, joint-stock company or association and
131 any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a
132 certificate of interest or ownership or similar written instrument; and

133 ~~(42)~~ (13) Any other income which this state is prohibited from taxing under the laws of the
134 United States.

135 (d) *Modification for West Virginia fiduciary adjustment.* -- There shall be added to or
136 subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as
137 beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under
138 section nineteen of this article.

139 (e) *Partners and S corporation shareholders.* -- The amounts of modifications required to

140 be made under this section by a partner or an S corporation shareholder, which relate to items of
141 income, gain, loss or deduction of a partnership or an S corporation, shall be determined under
142 section seventeen of this article.

143 (f) *Husband and wife.* -- If husband and wife determine their federal income tax on a joint
144 return but determine their West Virginia income taxes separately, they shall determine their West
145 Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been
146 determined separately.

147 (g) *Effective date.* -- (1) Changes in the language of this section enacted in the year 2000
148 shall apply to taxable years beginning after December 31, 2000.

149 (2) Changes in the language of this section enacted in the year 2002 shall apply to taxable
150 years beginning after December 31, 2002.

NOTE: The purpose of this bill is to reduce the severance tax on coal to 4%, eliminate the exception for professional services from the consumer use and sales tax, and provide an adjustment decreasing federal adjusted gross income of up to \$20,000 in social security benefits.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.